

STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION

IN THE MATTER OF DETERMINING  
Whether there has been a violation  
of the Franchise Investment Protection Act of the  
State of Washington by:

Grout Doctor Franchising Co. of America, Inc.,  
Barry F. Baruh, their employees and agents,

Respondents.

SDO - 070 - 02

SUMMARY ORDER TO CEASE AND DESIST

Case No.02-05-159

THE STATE OF WASHINGTON TO:

Grout Doctor Franchising Co. of America, Inc.  
Barry F. Baruh  
1056 El Capitan Drive  
Danville, CA 94526

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents, Grout Doctor Franchising Company of America, Inc. and Barry F. Baruh, have violated the Franchise Investment Protection Act and that such violations justify the entry of an order of the Securities Administrator under RCW 19.100.248 to cease and desist from such violations. The Securities Administrator finds that delay in ordering the Respondents to cease and desist from such violations would be hazardous to investors and to the public and that a Summary Order to Cease and Desist should be entered immediately. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

I.

Grout Doctor Franchising Company of America, Inc. ("Grout Doctor Franchising") is a California corporation with a primary business address of 1056 El Capitan Drive, Danville, California. Grout Doctor Franchising grants franchises for the performance of grout cleaning and restoration services. Barry F. Baruh ("Baruh") is the President and Chief Executive Officer of Grout Doctor Franchising.

SUMMARY ORDER TO CEASE AND DESIST

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Grout Doctor Franchising Co. of America, Inc.

DEPARTMENT OF FINANCIAL INSTITUTIONS  
Securities Division  
PO Box 9033  
Olympia, WA 98507-9033  
(360) 902-8760

## II.

A Washington resident, while in California performing other work on a recently deceased relative's house in that state in September of 2001, contacted Barry F. Baruh of Grout Doctor Franchising about having grout restoration work done on the residence. Baruh came to the house and provided an estimate for doing the work, and because the Washington resident expressed interest in the process performed Baruh explained about the company and informed the Washington resident that he too could become a "Grout Doctor" performing grout restoration and cleaning services. After the Washington resident returned to Washington he contacted Baruh by telephone and arranged a meeting in California to further discuss a franchise arrangement. At the subsequent meeting in October of 2001 the Washington resident discussed with Baruh the possibility of buying a franchise to be located in the state of Washington as well as obtaining the right to sell other franchises throughout the state.

In December of 2001, the Washington resident again returned to California and executed two agreements with Grout Doctor Franchising and its President and Chief Executive Officer Baruh. The first, entitled simply "Agreement" and dated December 12, 2001, granted the Washington resident as "licensee" (in part) the right and license to use the trade name and service mark "The Grout Doctor," to operate the business under such name within the State of Washington, to use the name in connection with all approved products, services, and approved sales promotion programs, and to use an operations manual containing specifications and instructions for the proper cleaning and restoration of grouting. The "Agreement" further provided that the Washington resident pay license fees for "each location established by or through" the licensee, pay monthly non-refundable royalty fees based on the greater of a minimum dollar amount or a percentage of gross monthly sales. Finally, the "Agreement" provided for the payment of an "enrollment fee" of \$25,000, \$5,000 of which was due and payable upon execution of the agreement with the balance due one hundred and eighty days following "written approval" of the Agreement or upon the close of escrow for the sale of the home the Washington resident had been working on in California.

The second associated agreement also executed by the Washington resident with Grout Doctor Franchising and Baruh on December 12, 2001, was entitled “The Grout Doctor Franchise Agreement” (“Franchise Agreement”). This document also granted the Washington resident the right and license to use the trade name and service mark “The Grout Doctor” as well as the right to operate the business under that name within a designated territory within the State of Washington and to use approved products, services and sales promotion programs. The Franchise Agreement further provided for the payment of an initial non-refundable franchise fee of \$12,500, the payment service fees based on the greater of a minimum dollar amount or a percentage of gross sales, entitled the franchisee to training in grout cleaning and restoration techniques, and granted the Washington resident the use of an operating manual which consisted of operational techniques, financial and accounting information, marketing plans, advertising techniques and other services and procedures relevant to the operation of the business.

The Washington resident paid Baruh \$4,500 in furtherance of the agreements. The Washington resident was not provided with a Uniform Franchise Offering Circular (“UFOC”) containing complete material information about the grout cleaning and restoration opportunity including, but not limited to, a financial statement for the seller.

### III.

The Respondent Grout Doctor Franchising Company of America, Inc. is not currently registered to offer and/or sell franchises in the state of Washington and has not previously been so registered.

The Securities Administrator finds that an emergency exists and that the continued offer and/or sale of the Grout Doctor opportunity by the Grout Doctor Franchising Company of America, Inc. in the manner described above presents a threat to the investing public.

Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

### CONCLUSIONS OF LAW

#### I.

The offer and/or sale of the Grout Doctor Franchising grout cleaning and restoration opportunity as described above constitutes the offer and/or sale of a franchise as defined in RCW 19.100.010(16) and RCW 19.100.010(4).

## II.

The offer and/or sale of said franchise as described above was made in violation of RCW 19.100.020 because no registration or notification of claim of exemption for such offer and/or sale is on file with the Administrator of Securities and it appears that the Respondents do not otherwise qualify for an exemption from registration.

## III.

The offer and/or sale of said franchise as described above was made in violation of RCW 19.100.170 because Respondents failed to provide the Washington resident with a UFOC containing complete material information about the grout cleaning and restoration opportunity including, but not limited to, a financial statement for the seller.

The Securities Administrator finds that this action is necessary and appropriate in the public interest and for the protection of investors and that the public safety and welfare require emergency action.

### SUMMARY ORDER

Based on the foregoing, NOW THEREFORE IT IS HEREBY SUMMARILY ORDERED That Respondents Grout Doctor Franchising Company of America, Inc., Barry F. Baruh, and their agents and employees each cease and desist from offering and/or selling franchises in any manner in violation of RCW 19.100.020, the registration requirement provision of the Franchise Investment Protection Act.

It is further SUMMARILY ORDERED That Respondents Grout Doctor Franchising Company of America, Inc., Barry F. Baruh, and their agents and employees each cease and desist from offering and/or selling franchises in any manner in violation of RCW 19.100.170, the antifraud provision of the Franchise Investment Protection Act.

AUTHORITY AND PROCEDURE

This Summary Order to Cease and Desist is entered pursuant to RCW 19.100.120 and RCW 19.100.130, and is subject to the provisions of chapter 34.05 RCW. The Respondents Grout Doctor Franchising Company of America, Inc. and Barry F. Baruh may make written requests for hearing as set forth in the Notice of Opportunity to Defend and Opportunity for Hearing accompanying this Summary Order to Cease and Desist. A request for a hearing should be in writing and sent to Deborah R. Bortner, Securities Administrator, Department of Financial Institutions, P.O. Box 9033, Olympia, Washington 98507-9033 to the attention of Brad Ferber. If a Respondent does not request a hearing as set forth in the accompanying Notice of Opportunity to Defend and Opportunity for Hearing, the Securities Administrator intends to adopt the Tentative Findings of Fact and Conclusions of Law as final and make this Summary Order to Cease and Desist permanent as to that Respondent.

Dated this 7th day of August, 2002.



Deborah R. Bortner  
Securities Administrator

Presented by: \_\_\_\_\_  
Brad Ferber  
Financial Legal Examiner

Approved by: \_\_\_\_\_  
Michael Stevenson  
Chief of Enforcement